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| KEITH LETTIER, |) | No. C 10-0371 JSW (PR) |
| |) | |
| Petitioner, |) | |
| |) | |
| vs. |) | ORDER TO SHOW CAUSE |
| |) | |
| ROBERT AYERS, JR., Warden, |) | |
| |) | (Docket No. 2) |
| Respondent. |) | |
| |) | |
| |) | |

Petitioner, a prisoner of the State of California, currently incarcerated at San Quentin State Prison in San Quentin, California, has filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging the decision of the Board of Parole Hearings (“Board”) to deny him parole in 2008. Petitioner has paid the filing fee. This order directs Respondent to show cause why the petition should not be granted.

According to the petition, Petitioner was convicted of second degree murder and was sentenced to 15 years-to-life in state prison. In this habeas action, Petitioner does not challenge his conviction, but instead challenges the execution of his sentence. Petitioner contends that the decision of the Board to deny him parole violates his constitutional rights. He alleges that he has exhausted state judicial remedies as to all of the claims raised in his federal petition.

I Standard of Review

This court may entertain a petition for a writ of habeas corpus “in behalf of a

1 person in custody pursuant to the judgment of a State court only on the ground that he is
 2 in custody in violation of the Constitution or laws or treaties of the United States.” 28
 3 U.S.C. § 2254(a).

4 It shall “award the writ or issue an order directing the respondent to show cause
 5 why the writ should not be granted, unless it appears from the application that the
 6 applicant or person detained is not entitled thereto.” *Id.* § 2243.

7 II Legal Claims

8 Petitioner alleges that his constitutional rights were violated by the Board’s
 9 decision to deny him parole at his 2008 hearing. Liberally construed, the allegations are
 10 sufficient to warrant a response from Respondent. *See Board of Pardons v. Allen*, 482
 11 U.S. 369 (1987); *see, e.g., Superintendent v. Hill*, 472 U.S. 445 (1985); *Hayward v.*
 12 *Marshall*, 603 F.3d 546 (9th Cir. 2010).

13 III Motion for Counsel

14 Petitioner has filed a motion seeking appointment of counsel (docket no. 2). The
 15 Sixth Amendment’s right to counsel does not apply in habeas corpus actions. *Knaubert*
 16 *v. Goldsmith*, 791 F.2d 722, 728 (9th Cir. 1986). 18 U.S.C. § 3006A(a)(2)(B) authorizes
 17 appointment of counsel to represent a habeas petitioner whenever “the court determines
 18 that the interests of justice so require and such person is financially unable to obtain
 19 representation.” The decision to appoint counsel is within the discretion of the district
 20 court. *See Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S.
 21 1023 (1987); *Knaubert*, 791 F.2d at 728.

22 Here, Petitioner appears to have effectively represented himself thus far and no
 23 evidentiary hearing appears necessary at this time. The Court concludes that the interests
 24 of justice do not require appointment of counsel at this time. Accordingly, Petitioner’s
 25 motion for appointment of counsel (docket no. 2) is DENIED without prejudice.

26 CONCLUSION

27 *For the foregoing reasons and for good cause shown,*

1 1. The Clerk shall serve by certified mail a copy of this order and the petition, and
2 all attachments thereto, on Respondent and Respondent's attorney, the Attorney General
3 of the State of California. The Clerk also shall serve a copy of this order on Petitioner.


4 2. Respondent shall file with the Court and serve on Petitioner, within **sixty (60)**
5 days of the issuance of this order, an answer conforming in all respects to Rule 5 of the
6 Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should
7 not be granted. Respondent shall file with the answer and serve on Petitioner a copy of all
8 portions of the state record that have been transcribed previously and that are relevant to a
9 determination of the issues presented by the petition. If Petitioner wishes to respond to
10 the answer, he shall do so by filing a traverse with the Court and serving it on Respondent
11 within **thirty (30)** days of his receipt of the answer.

12 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an
13 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing
14 Section 2254 Cases. If Respondent files such a motion, Petitioner shall file with the Court
15 and serve on Respondent an opposition or statement of non-opposition within **thirty (30)**
16 days of receipt of the motion, and Respondent shall file with the Court and serve on
17 Petitioner a reply within **fifteen (15)** days of receipt of any opposition.

18 4. It is Petitioner's responsibility to prosecute this case. Petitioner must keep
19 the Court informed of any change of address by filing a separate paper captioned "Notice
20 of Change of Address." He must comply with the Court's orders in a timely fashion.
21 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant
22 to Federal Rule of Civil Procedure 41(b).

23 IT IS SO ORDERED.

24 DATED: September 17, 2010

25 
26 _____
27 JEFFREY S. WHITE
28 United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

KEITH L. LETTIER,

Plaintiff,

v.

ROBERT AYERS et al,

Defendant.

Case Number: CV10-00371 JSW


CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 17, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Keith L. Lettier
E50464
San Quentin State Prison
San Quentin, CA 94974

Dated: September 17, 2010


Richard W. Wieking, Clerk
By: Jennifer Ottolini, Deputy Clerk